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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554


Re: Petition for Further Notice of Proposed Rulemaking
ET Docket No. 93-62, RM- (filed December 22, 1994)

Dear Mr. Caton:

Transmitted herewith for filing with the Commission on behalf of the Electromagnetic Energy Association ("EEA") are an original and nine copies of the "Summary" section of the above-referenced Petition. A typographical error in the first sentence of the Summary section has been corrected in the enclosed copy. For ease of reference, I have also enclosed copies of the cover page of the Petition. Please associate the enclosed corrected pages with the file copies of EEA's Petition.

Should there be any questions regarding this matter, please communicate with this office.

Very truly yours,



John I. Stewart, Jr.

Enclosures

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Before the
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In the Matter of)

Guidelines for Evaluating the)
Environmental Effects of)
Radiofrequency Radiation)

ET Docket No. 93-62
RM- _____

DOCKET FILE COPY ORIGINAL

PETITION FOR FURTHER NOTICE
OF PROPOSED RULEMAKING

ORIGINAL

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Attorneys for the
ELECTROMAGNETIC ENERGY
ASSOCIATION

December 22, 1994

SUMMARY

The Electromagnetic Energy Association ("EEA"), a coalition of companies and associations representing a broad spectrum of communications services from broadcasting to cellular, PCS and other land mobile services, requests the Commission to issue a Further Notice of Proposed Rulemaking in this proceeding and to adopt a rule preempting state and local regulation of the RF energy aspects of FCC-authorized antenna facilities to the extent such regulation is inconsistent with the FCC's own RF standards.

The nation stands at a critical juncture, as important new communications services are being introduced and existing services are being improved and expanded through new technologies. The resulting wireless communications environment, encompassing broadcasting, cellular, private land mobile and new services such as PCS, will be essential to the successful implementation of federal telecommunications policies, including the development of the National Information Infrastructure. State and local regulations that are inconsistent with the FCC's regulations and unduly impede or even prevent the construction and operation of FCC-authorized facilities will undercut the realization of these federal policy objectives.

Under these circumstances, the Commission has clear authority to preempt state and local regulation. First, it is authorized by Congress, under the Communications Act and the National Environmental Policy Act, to adopt rules governing exposure to electromagnetic energy associated with the operation of

authorized antenna facilities. It is further mandated under the Communications Act to provide for a rapid, efficient, nationwide wireless communications service, to encourage the provision of new technologies and services to the public, and to assure a fair, efficient and equitable distribution of radio service. 47 U.S.C. §§ 151, 157(a), 307(b). Thus, under the Supremacy Clause of the U.S. Constitution, the Commission has the authority to preempt state and local RF regulations to the extent they interfere with the implementation of congressionally mandated policy objectives.

The factual evidence currently available strongly supports the Commission's exercise of this authority. Examples collected by EEA and presented by commenters in this proceeding demonstrate that a wide variety of state and local regulations addressing RF energy considerations have delayed or prevented the construction and operation of FCC-authorized broadcast, common carrier and private land mobile antenna facilities, have required less than optimal operation of FCC-authorized facilities, or have imposed additional costs and licensing requirements on FCC-authorized facilities. Increasing attention by state and local regulators to RF issues, coupled with the increasing number of new antennas that must be built within the near future, will continue to intensify the conflict.

The Commission has stated that it "will not hesitate" to adopt an RF preemption rule at such time as it is presented with the evidence supporting the need for such a rule. EEA respectfully submits that that time has now come, and requests that the Commission issue a Further Notice of Proposed Rulemaking to preempt state and local RF regulation.